

October 25, 2011

JOHN HEFFNER
202 742 8607
Direct Fax 202 742 8697
john.heffner@strasburger.com

Cynthia A. Brown
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423-0001

ORIGINAL

RE: FD 35559, Saratoga And North Creek Railway, LLC-Operation Exemption-Tahawus Line

231173

Dear Ms. Brown:

On behalf of Saratoga And North Creek Railway, LLC, I am submitting an original and ten copies of a Verified Notice of Exemption pursuant to 49 U.S.C. 10902 and 49 CFR 1150.41. In addition, I am enclosing with this filing a filing fee check payable to the Board for \$1800 and a copy of this filing on a computer disk.

Please date stamp and return one copy of this filing.

Sincerely yours



John Heffner

10-25-2011
Per [unclear]
[unclear]

Enclosure

ORIGINAL

FEE RECEIVED

OCT 25 2011

**SURFACE
TRANSPORTATION BOARD**

FILED

OCT 25 2011

**SURFACE
TRANSPORTATION BOARD**

Strasburger & Price, LLP

10/25

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ORIGINAL

FD 35559

**SARATOGA AND NORTH CREEK RAILWAY, LLC
—OPERATION EXEMPTION—
TAHAWUS LINE**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10902 and 49 CFR 1150.41**

Submitted By:

John D. Heffner
Strasburger & Price
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

ORIGINAL

Counsel for Petitioner

Dated: October 24, 2011

FOT 25

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35559

**SARATOGA AND NORTH CREEK RAILWAY, LLC
—OPERATION EXEMPTION—
TAHAWUS LINE**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10902 and 49 CFR 1150.41**

Saratoga and North Creek Railway, LLC (“Saratoga”), a limited liability company and existing class III short line rail carrier, files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (the “Board”) to permit it to operate about 29.71 miles of a private line of railroad (“the Line” or “the Tahawus Line”). Presently, the Line is owned by NL Industries, Inc. (“NL”), an industrial concern which is selling it to Saratoga in the very near future. The Line extends between the existing connection with Saratoga at MP NC 0.0 at North Creek and its terminus at MP NC 29.71 at Newcomb, NY. Upon acquisition, Saratoga intends to provide common carrier railroad service over the subject line connecting to its existing

trackage at North Creek and extending to its connection with the Delaware & Hudson Railway d/b/a Canadian Pacific (“CP”) at Saratoga Springs, NY.¹

INFORMATION REQUIRED BY 49 CFR 1150.43

Name and Address of Applicant

49 CFR 1150.43(a)

**Saratoga and North Creek Railway, LLC
c/o Iowa Pacific Holdings, LLC
118 South Clinton Street
Suite 400
Chicago, IL 60661**

Applicant's Representative

49 CFR 1150.43(b)

**John D. Heffner
Strasburger & Price
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607**

Statement of Agreement

49 CFR 1150.43(c)

Saratoga has executed an agreement to acquire the subject rail line from NL

in the very near future. It anticipates consummating this acquisition before this notice becomes effective.²

¹ The Board had previously authorized Saratoga to operate between Saratoga Springs and North Creek in two prior proceedings. In FD 35500, it exempted Saratoga's acquisition and operation over an exclusive, permanent operating easement on track and right of way owned by the Town of Corinth. In FD 35500, Sub-No. 1, the Board granted Saratoga an exemption to operate over trackage acquired by Warren County from CP after its abandonment. See, Saratoga and North Creek Railway, LLC–Acquisition and Operation Exemption–Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific, FD 25500, STB served June 1, 2011 and Saratoga and North Creek Railway, LLC–Operation Exemption–Warren County, N.Y., FD 35500 Sub. No. 1, STB served June 1, 2011.

Operator of the Property

49 CFR 1150.43(d)

Saratoga will provide all common carrier rail operations over the subject rail line.

Brief Summary of Transaction

49 CFR 1150.43(e)

Saratoga is a recently established limited liability company and class III short line rail carrier indirectly owned by short line holding company Iowa Pacific Holdings, LLC, and its wholly-owned noncarrier subsidiary, Permian Basin Railways.³ IPH/Permian Basin formed Saratoga for the purpose of operating the entire Tahawus Line between Newcomb on the north and Saratoga Springs on the south interchanging traffic with CP at Saratoga Springs.

The Line was originally constructed by the United States Government earlier in the 20th Century to transport minerals being mined in northern New York State. More recently the Line has been owned by NL and operated as a long private piece

² Inasmuch as the subject trackage is an industry-owned spur track exempt from Board regulation under 49 U.S.C. 10906 and has never been operated in common carrier service, Saratoga does not need any Board authority to acquire this trackage as such property is outside the Board's jurisdiction. *See, See B. Willis, C.P.A., Inc.—Petition for Declaratory Order*, STB Finance Docket No. 34013 (STB served Oct. 3, 2001) (*B. Willis*), *aff'd sub nom. B. Willis, C.P.A., Inc. v. STB*, 51 Fed. Appx. 321 (D.C. Cir. 2002). Private track is typically built by a shipper (or its contractors) to serve only that shipper, moving the shipper's own goods, so that there is no "holding out" to serve the public at large. *B. Willis*, slip op. at 2.

³ Saratoga in turn is wholly owned by San Luis & Rio Grande Railroad ("SLRG"), an existing class III short line rail carrier subsidiary of Permian Basin Railways. Control of Saratoga by SLRG and in turn Permian Basin Railways and Iowa Pacific Holdings was exempted by the Board in San Luis & Rio Grande Railroad—Continuance in Control Exemption—Saratoga and North Creek Railway, LLC, FD 35499, STB served June 1, 2011.

of railroad by CP's predecessor, the Delaware & Hudson Railroad as a contractor for that customer. On or about July 1, 2011, Saratoga restored common carrier rail service between North Creek and Saratoga Springs and issuance of this exemption will permit it to restore service over the Tahawus Line serving NL and other shippers who desire to have rail service.

The conversion of "private" or industry owned track to common carrier service by an existing Board-licensed rail carrier is appropriate for exemption under 49 U.S.C. 10902 and 49 CFR 1150.41. Section 1150.41 of those rules provides, except as indicated in paragraphs (a) through (d) of this section, that this exemption applies to acquisitions or operations by Class III rail carriers under section 10902. The Board routinely authorizes by exemption the conversion to and common carrier operation of what had previously been private or industry owned trackage such as that currently owned by NL.⁴ The fact that Saratoga will be holding out to serve the public at large is determinative of its status as a common carrier.

⁴ See, Effingham R.R. Co.—Pet. For Declaratory Order, 2 S.T.B. 606 (1997).

Other information required

(1) The name and address of the party transferring the subject property:

No property will be transferred as a result of this filing. However, Saratoga will be initiating common carrier operations over track it will be acquiring outside the jurisdiction of the Board.

The name and address of the owner/operator is:

Saratoga & North Creek Railway, LLC
c/o Iowa Pacific Holdings, LLC
118 South Clinton Street
Suite 400
Chicago, IL 60661

(2) The proposed time schedule for consummation of the transaction:

Saratoga intends to consummate this transaction at least 30 days from the effective date of this notice, probably around late November 2011.

The mileposts of the subject property, including any branch lines:

The subject trackage extends between MP NC 0.0 at North Creek and its terminus at MP NC 29.71 at Newcomb, NY.

The total route miles to be operated:

About 29.71 miles of railroad.

Map

49 CFR 1150.43(f)

A map depicting the railroad trackage to be operated is attached as Exhibit

A.

Certificate of Carrier Classification **49 CFR 1150.43(g)**

Saratoga certifies that with this transaction its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR 1150.43(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments **49 CFR 1150.43(h)**

Not applicable. There are no agreements applicable to the Line imposing any interchange commitments. The subject line of railroad does not physically connect with any rail lines other than the contiguous lines owned by Warren County and in turn the Town of Corinth. Consequently, Saratoga will not be able to interchange with any carriers other than CP.

Disclosure of Intent to Transport Waste

Saratoga's license with the Town of Corinth does not permit the collecting, sorting, loading, unloading, transferring, or transporting of municipal solid waste ("MSW") or construction and demolition ("C&D") material so it will not be handling this traffic on the subject line as well.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. 10902.

Caption Summary **49 CFR 1150.44**

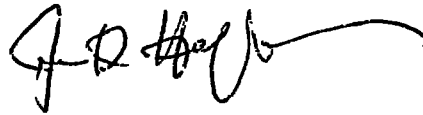
A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data **49 CFR 1105**

Pursuant to 49 CFR 1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR 1105(c) (2) (i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR 1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR 1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Submitted By:

A handwritten signature in black ink, appearing to read "J D Heffner", with a long horizontal flourish extending to the right.

John D. Heffner
Strasburger & Price
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607
Counsel for Petitioner

Dated: October 24, 2011

EXHIBIT A

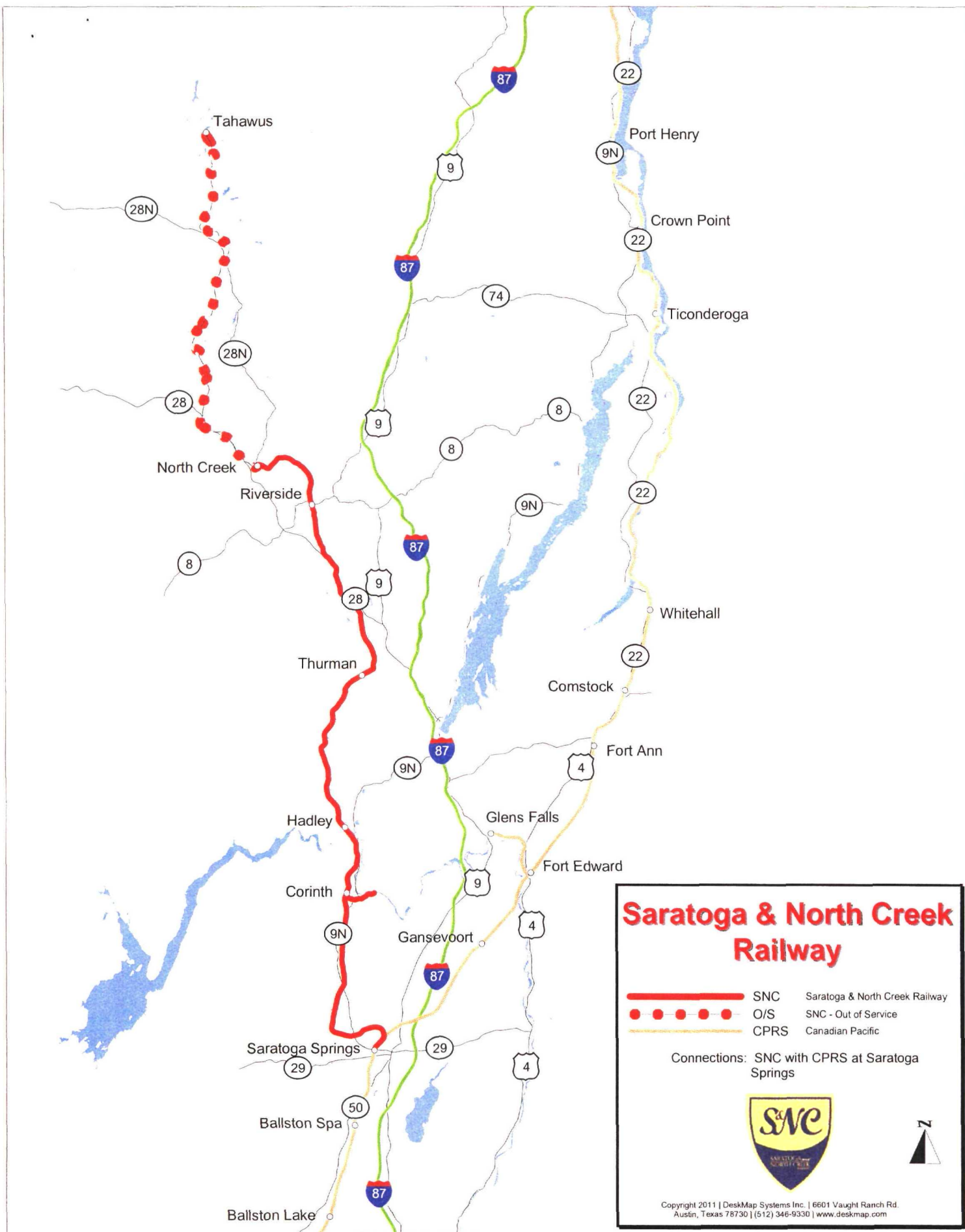
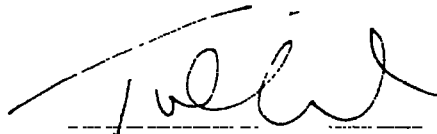


Exhibit B

Certification

I, Todd N Cecil, certify that I am Vice President-Real Estate Development of Permian Basin Railways, Inc., holding company owner of Saratoga and North Creek Railway, LLC, and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201.1-1)

Dated: October 24, 2011



Signature

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35559

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Saratoga certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November __, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD No. 35559, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, Esq., Strasburger & Price, 1700 K Street, N.W. – Suite 640, Washington, D.C. 20006, Telephone: (202) 742-8607 counsel for Saratoga.

Board decisions and notices are available on our website at
WWW.STB.DOT.GOV.

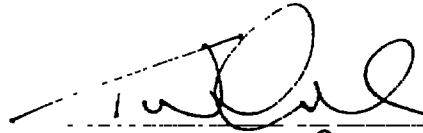
Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

VERIFICATION

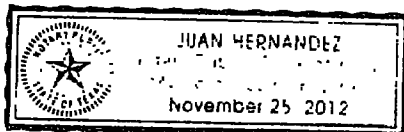
STATE OF TEXAS)
) SS
COUNTY OF BEXAR)

Todd N. Cecil, being duly sworn according to law, hereby deposes and states that he is holds the position of Vice President - Real Estate Development with Permian Basin Railways, holding company owner of Saratoga and North Creek Railway, LLC, is authorized to make this Verification, has read the foregoing document, and knows the facts asserted therein are true an accurate as stated, to the best of (her) his knowledge, information, and belief

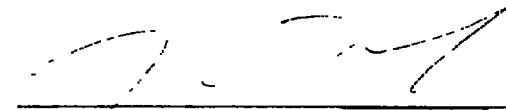


Todd N. Cecil

Witness my hand and official seal



My Commission Expires



Printed Name Juan Hernandez
Residing in San Antonio County, Texas
11/25/12